

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 370 of 1996

in

SPECIAL CIVIL APPLICATION No 117 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

PRADIP P PATEL

Versus

STATE OF GUJARAT

Appearance:

MR BA VAISHNAV for Petitioner
MR DA BAMBHANIA for Respondent No. 2
SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 22/04/96

ORAL JUDGEMENT

Admitted.

Mr.Bambhania, Additional Government Pleader appears on behalf of respondent no.1 and 2 and waives service of Notice of admission. In the facts and circumstances of the case, the appeal is taken up for final hearing to day.

This appeal is filed against the order passed by the learned Single Judge in Special Civil Application No. 117 of 1996 on February 19, 1996. By the impugned order the learned Single Judge was pleased to dismiss the petition filed by the appellant-petitioner on the ground that the petitioner has an alternative remedy by way of appeal under Rule 18 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971.

We have heard Mr.Vaishnav, learned counsel for the appellant and Mr.Bambhania learned Additional Government Pleader for Respondent Nos.1 and 2. Mr. Vaishnav, learned counsel for the appellant contended that an appeal can be filed only when an order is passed against the appellant by the authority. In the instant case, no order adverse to the appellant is so far passed by the authority. Hence, he cannot file appeal before any authority. He submitted that representation regarding fixation of pay was made by the appellant as early as on July 12, 1993, Annexure.C to the petition. The said application is still pending. Drawing our attention to Annexure.E to the petition dt. September 7, 1995, he stated that application is pending and Head of the Department where the appellant is serving is also informed accordingly. It was also stated in the said communication that an application made by the appellant is forwarded to the Government and as and when the decision will be taken, the office where the appellant is serving will be informed accordingly. In these circumstances, obviously the appellant could not file appeal. He also submitted that neither under the provisions of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971, nor in accordance with the provisions of the Gujarat Civil Service Tribunal Act, 1972, the appeal could be maintainable. In the facts and circumstances of the case and when according to the appellant an application is pending, it would be in the fitness of things to direct the respondents to dispose of the said representation, if not disposed off so far, as expeditiously as possible preferably before June 30, 1996. The appeal is accordingly partly allowed. In the facts and circumstances of the case no order as to costs.
